IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATIONS Nos 828 & 829 of 1998

With

CIVIL APPLICATIONS Nos 1199 & 1200 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VALJI MITHU SENGAR

Versus

GIMPEX LIMITED

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Appearance:

Mr.S.I.Nanavati for
NANAVATI & NANAVATI for Petitioners
MR SK PATEL for
Mr.P.S. Patel for Respondents

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CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 28/03/2002

COMMON ORAL JUDGEMENT

1. Heard Mr. S.I.Nanavati, senior advocate for the petitioners - original defendants and Mr.S.K.Patel, learned advocate, for the respondent - original plaintiff.

2. Two Applications being Civil Applications Nos.1199 and 1200 of 2002 were filed by the applicants -original defendants praying for modification of the orders dated 18.5.98 passed in above Civil Revision Applications on the ground of enabling the parties to carry on their business peacefully as well as praying for fixing early date of hearing of Civil Revision Applications, in view of the order passed earlier on 12.11.98 in Civil Applications Nos.4687 and 4689 of 1998, whereby the Court has fixed the present Civil Revision Applications for hearing on 26.11.98. The applicants original defendants have also annexed various documents/orders passed by the trial court while seeking modification of the order passed earlier on 18.5.1998, whereby Rule was issued in the respective main Revision Applications by the Court. Considering the prayers made in the Civil Applications, by the consent of the advocates appearing in the matter, I have kept the Civil Applications with the main Revision Applications for final hearing today and accordingly during hearing, I was taken through the papers of main Revision Applications, including the documents attached thereto and the orders under challenge passed by the learned trial Judge.

3. Mr.S.K.Patel appearing for the respondent original plaintiff had tendered affidavit filed in the Civil Applications and during hearing I was also taken through the said affidavit filed by the original plaintiff.

4. As found from the challenge made in the main Revision Applications, the petitioners- original defendants have challenged the order passed by the learned trial Judge below Application Exh.44 on 9.3.1998 and the order passed below Application Exh.51 on 21.4.98 on several grounds. Mr. S.I. Nanavati has also taken me through the prayers in the Application Exh.5 filed by the respondent - original plaintiff and the order passed below Application Exh.5 by the trial court and the order below Application Exh. 44 and the order passed by the trial court below review Application being Exh.51. It is his submission that because of the order dated 18.5.98 directing the parties to maintain status quo, the petitioners - original defendants are not in a position to do their activities on the land, which was granted for mining purpose. He further submitted that though the

Revision Applications were fixed for final hearing as back as in November 1998, the same could not be heard and accordingly the petitioners - original defendants had to move this court by filing above two Civil Applications. Even in the above Civil Applications filed by the petitioners - original defendants, they have highlighted about the earlier order passed by the court while issuing rule after hearing the parties and while adjourning the matter to 18.6.1998, the parties were directed to maintain status quo on the suit site as recorded in the Panchanama made earlier. In the above Applications, the petitioners - original defendants have also highlighted about the earlier Applications being Civil Applications Nos.4687 and 4689 of 1998 and the common order passed on 12.11.1998 on the above two Civil Applications.

5. As contended by Mr. S.I. Nanavati while taking me through he order passed below Application Exh.5 in Special Civil Suit No.93/97 filed by the respondent plaintiff, the court has though rejected the Application of the plaintiff Exh.5 and vacated the ex party order directing the parties to maintain status quo, however while clarifying, the Court has observed that the plaintiff is permitted to take out 4000 M.T. of bentonite and the defendants were permitted to excavate minerals by doing digging work 10 feet away from Survey No.154. As found from Exh.44, the respondent - plaintiff has moved the learned trial Judge on 7.2.98 intimating the court that the plaintiff is prepared to take out 4000 M./T. of Bentonite from the disputed Survey No.420. However, looking to the situation of the mineral, the request was made to permit the plaintiff to excavate 4000 M.T. of Bentonite on priority basis and the plaintiff was permitted to excavate said 4000 M.T. of Bentonite within 60 days from the date of the order, namely, from 9.3.98. While passing said order, the learned trial Judge has observed that he cannot modify or alter any word of the earlier passed by his learned brother.

6. As found from the document Exh.51, the learned trial Judge has highlighted about the order passed below Application Exh.44. By Exhibit a request was made to review the order passed below Exh.44 and the learned trial Judge has, after considering the Application Exh.51 and on examining the order passed earlier, dismissed the Application by observing that the plaintiff is entitled to get 4000 M.T. of Bentonite. It was also observed that if in the order below Exh.5 the word 'lift or remove' is used, it would mean to 'mine'.

7. Mr.S.K.Patel appearing for the respondent

plaintiff has submitted that claim of the plaintiff in the Suit is for damages and other reliefs and the suit is pending where the parties are required to lead evidence to place their case. He further submitted that an Agreement was executed between the plaintiff and the defendants and the Agreement was for the period between 1.11.1996 to 1.11.1997 and by now, the Agreement has come to an end and surely the petitioners - defendants are not required to maintain status quo in respect of the land bearing Survey No.420.

8. Accordingly while disposing of these two Revision Applications, as per order passed by the learned trial Judge below Application Exh.5, the respondent - plaintiff is permitted to lift the material of Bentonite from the site to the extent of 4000 M.T. and as brought to my notice by Mr. Patel that the said material is not useful and as agreement by Mr. Nanavati that the respondent plaintiff be permitted to excavate 4000 M.T. of Bentonite from Survey No.420, leased to the petitioner No.1 by granting three months time from 1.4.2002. Accordingly, respondent - plaintiff is permitted to excavate 4000 M.T. of bentonite from Survey No.420 and complete such excavation on or before 30-6-2002. The respondent - plaintiff is directed to deposit the sale proceeds of such excavated material in the trial court before removing the same from the site. Mr. Nanavati appearing for the respondent plaintiff also states that necessary lease is already existing and accordingly the plaintiff can excavate the 4000 M.T. of Bentonite from Survey No.420.

9. The status quo order granted on 18.5.1998 is accordingly modified in both the Revision Applications and both the Revision Applications are accordingly disposed of in the above terms. Rule is made absolute in the above terms in both the cases. However, there will be no order as to costs.

In view of the order passed in main matters, no orders are required to be passed in Civil Applications Nos.1199 and 1200 of 2002 and the same are disposed of accordingly.

(D.K.Trivedi,J)

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